



COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

December 14, 2010

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

39 DECEMBER 14, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**GRANT OF EASEMENT FROM THE LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT TO COUNTY OF LOS ANGELES AND
CALIFORNIA DEPARTMENT OF FISH AND GAME
BIG TUJUNGA DAM AND RESERVOIR – BIG TUJUNGA WASH
PARCEL NOS. P-79F, P-81F, P-83F TO P-91F, P-93F, P-95F TO P-98F, 100F, AND 101F
CITY OF LOS ANGELES
(SUPERVISORIAL DISTRICT 5)
(3 VOTES)**

SUBJECT

This action is to authorize the Los Angeles County Flood Control District to grant a conservation easement to the County of Los Angeles and the California Department of Fish and Game, as a third-party beneficiary, over the Los Angeles County Flood Control District's Big Tujunga Wash Mitigation Area. The purpose of the conservation easement is to ensure the perpetual protection and preservation of the biological values of the Big Tujunga Wash Mitigation Area.

IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Find the easement transaction to be categorically exempt from the provisions of the California Environmental Quality Act.
2. Find that the proposed grant of an easement for a conservation area within the Big Tujunga Wash Mitigation Area, located within lands categorized under Big Tujunga Dam and Reservoir – Big Tujunga Wash, Parcel Nos. P-79F, P-81F, P-83F to P-91F, P-93F, P-95F to P-98F, 100F, and 101F,

from Los Angeles County Flood Control District to the County of Los Angeles, with California Department of Fish and Game as a third-party beneficiary, and subsequent use of said easement, will not interfere with the use of Big Tujunga Dam and Reservoir – Big Tujunga Wash for any purpose of the Los Angeles County Flood Control District.

3. Approve the grant easement for conservation area purposes from the Los Angeles County Flood Control District to the County of Los Angeles within the Big Tujunga Dam and Reservoir – Big Tujunga Wash, Parcel Nos. P-79F, P-81F, P-83F to P-91F, P-93F, P-95F to P-98F, 100F, and 101F.
4. Authorize the Chief Engineer or her designee, on behalf of the Los Angeles County Flood Control District, to enter into and sign the Conservation Easement Deed and authorize delivery to the County of Los Angeles.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to obtain your Board of Supervisors' (Board) approval to grant an easement in the Big Tujunga Dam and Reservoir – Big Tujunga Wash, comprising of Parcel Nos. P-79F, P-81F, P-83F to P-91F, P-93F, P-95F to P-98F, 100F, and 101F, to conserve the biological functions of these parcels.

In June 1998, your Board authorized the acquisition of several parcels that are situated in the Big Tujunga Wash south of the Foothill Freeway (I-210), north of Wentworth Street, west of Radwin Avenue, and approximately 1,300 feet east of Wheatland Avenue in the Sunland area of the City of Los Angeles. These parcels total over 200 acres. Their acquisition was for the purpose of environmental mitigation to offset impacts from past, current, and future projects; and maintenance activities undertaken by the Los Angeles County Flood Control District (District). The acquisition of these parcels was completed in 1999, and the parcels now comprise what is now known as the Big Tujunga Wash Mitigation Area. Several agencies, specifically the United States Army Corps of Engineers, California Department of Fish and Game (DFG), and the California Regional Water Quality Control Board, are issuing mitigation credits for the District to use to meet the mitigation requirements under the permits the District obtains from these agencies.

The DFG has requested the conservation easement to ensure the parcels within the Big Tujunga Wash Mitigation Area maintain their biological functions and thus mitigation value. For the purposes of ensuring adequate funding for the operation of the Big Tujunga Wash Mitigation Area and maintenance of its biological functions without the necessity of a large up-front endowment, DFG is willing for the easement to be held by the County of Los Angeles (County), with DFG as a third-party beneficiary. The granting of this easement is not considered adverse to the District's purposes. Since the granting of the easement is for the benefit of the District and the public it serves, it is recommended the easement be granted at no cost.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1), Community and Municipal Services (Goal 3), and Public Safety (Goal 5). The easement will allow the District to preserve the biological functions of the site for the benefit of the environment of the Sunland area community. The easement will also allow the District to efficiently provide the mitigation required to continue to undertake infrastructure maintenance and projects to protect the

health, safety, and property of District residents and businesses.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund or the Flood Control District Fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Big Tujunga Wash Mitigation Area, comprised of Parcel Nos. P-79F, P-81F, P-83F to P-91F, P-93F, P-95F to P-98F, 100F, and 101F, is located in the Sunland area of the City of Los Angeles, in Big Tujunga Wash south of the Foothill Freeway (I-210), north of Wentworth Street, west of Radwin Avenue, and approximately 1,300 feet east of Wheatland Avenue.

The proposed grant of easement is authorized by Section 2, Paragraph 13, of the Los Angeles County Flood Control Act. This section provides as follows: "Said Los Angeles County Flood Control District is hereby declared to be a body corporate and politic, and as such shall have the power...13. To.....sell or disposed of any property (or any interest therein) whenever in the judgment of said board of supervisors, said property, or any interest therein, or any part thereof, is no longer required for the purpose of said district".

The granting of this easement will not hinder the use of the Big Tujunga Wash Mitigation Area for existing utilities, recreational corridors, or flood control purposes.

The enclosed conservation easement agreement has been approved as to form by County Counsel. The resultant easement document will be recorded.

ENVIRONMENTAL DOCUMENTATION

This proposed grant of easement and conservation area agreement are categorically exempt from the provisions of the California Environmental Quality Act (CEQA). They are within the classes of project that have been determined not to have a significant effect on the environment in that they meet the criteria specified in Sections 15309, 15313, 15317, and 15321 of the CEQA Guidelines and Classes 9, 13, 17, and 21 of the revised County Environmental Document Reporting Procedures and Guidelines, Appendix G, adopted by your Board on November 17, 1987.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This action allows for the joint use of the County right of way without interfering with County operations.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Water Resources Division.

The Honorable Board of Supervisors
12/14/2010
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Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER
Director

GF:CS:abc

Enclosures

c: Chief Executive Office
County Counsel
Executive Office
Auditor-Controller

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CONSERVATION EASEMENT DEED

(Including Third-Party Beneficiary)

THIS CONSERVATION EASEMENT DEED is made this _____ day of _____, 20____, by LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ("Grantor"), in favor of COUNTY OF LOS ANGELES ("Grantee"), acting by and through its DEPARTMENT OF PUBLIC WORKS, with reference to the following facts:

RECITALS

A. Grantor is a public agency the sole owner in fee simple of certain real property containing approximately 212 acres, located in the City of Los Angeles, County of Los Angeles, State of California, designated Assessor's Parcel Number(s) 2528-030-906, 2528-030-907, 2549-002-905, 2549-002-906, 2549-002-908, 2549-002-909, 2549-004-900, 2549-004-901, 2549-004-902, 2549-004-903, 2549-004-904, 2549-004-905, 2549-004-907, 2549-004-913, 2549-004-914, and 2548-005-900, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. The Conservation Property possesses wildlife and habitat values of great importance to Grantee, and the people of the State of California. The Conservation Property provides or potentially will provide high quality natural, restored and/or enhanced habitat for seven sensitive plant and eleven sensitive animal species as well as two State and/or federal listed plant species [Nevin's barberry (*Berberis nevinii*) and Slender-horned spine flower (*Dodecahema leptocerus*)] and seven State and/or federal listed animals species [Santa Ana sucker (*Catostomus santaanae*), Arroyo southwestern toad (*Bufo microscaphus californicus*), California red-legged frog (*Rana aurora draytonii*), Mountain yellow-legged frog (*Rana muscosa*), Southwestern willow flycatcher (*Empidonax traillii eximius*), coastal California gnatcatcher (*Polioptila californica*), and least Bell's vireo (*Vireo bellii pusillus*)]. It contains a mix of Riversidean alluvial fan sage scrub, cottonwood-willow woodland, mulefat scrub, oak/sycamore woodlands, coastal sage scrub, non-native grasslands, and open water ponds, some of which are considered to be restored, created, enhanced and/or preserved jurisdictional waters of the United States. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Conservation Property.

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C. Grantee is authorized to hold this Conservation Easements pursuant to Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3(b) and otherwise authorized to acquire and hold title to real property.

D. This Conservation Easement provides mitigation for certain impacts of flood control and water conservation projects and maintenance activities located within the boundaries of the Los Angeles County Flood Control District, County of Los Angeles, State of California, and is granted pursuant to the Big Tujunga Wash Conservation Area Agreement ("CAA"), which is in the process of being prepared, by and between the Los Angeles County Flood Control District, Region 5 of CDFG, CDFG Tracking No. _____. This Conservation Easement is to be a part of the CAA. The CAA will include the 2000 Master Mitigation Plan for the Big Tujunga Wash Mitigation Bank ("Master Plan"), which describes the initial habitat enhancement, restoration and creation efforts and the Long-Term Maintenance and Management Plan ("Management Plan"), which is in the process of being prepared. Implementation of the Master Plan was initiated in 2000 and has been on-going since that time. The Master Plan is incorporated by reference into this Conservation Easement as if fully set forth herein. It is intended that all activities in the Management Plan, and any revisions to it, will be incorporated by this reference when approved by CDFG.

E. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Conservation Property.

1. Purposes. The purposes of this Conservation Easement are to ensure the Conservation Property will be retained forever in its natural, restored or enhanced condition as contemplated by the CAA, the Master Plan and the Management Plan, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Conservation Property. Grantor intends that this Conservation Easement will confine the use of the Conservation Property to such activities that are consistent with those purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the CAA, the Master Plan and the Management Plan.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee and to CDFG as a third party beneficiary of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Conservation Property;

(b) To enter the Property at reasonable times for scientific research and interpretive purposes and in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the CAA, the Master Plan and the Management Plan and to

implement Master Plan and Management Plan activities that have not been implemented by Grantor, provided that neither Grantee nor CDFG shall unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property;

(c) To prevent any activity on or use of the Conservation Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Conservation Property that may be damaged by any act, failure to act, or any use by any person that is inconsistent with the purposes of this Conservation Easement;

(d) To require that all mineral, air and water rights of the Grantor associated with the Conservation Property as Grantee or CDFG deems necessary to preserve and protect the biological resources and Conservation Values of the Conservation Property shall remain a part of and be put to beneficial use upon the Conservation Property, consistent with the purposes of this Conservation Easement; and

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Conservation Property hereby terminated and extinguished, and may not be used on or transferred to any portion of the Conservation Property, nor any other property adjacent or otherwise.

3. Prohibited Uses. Any activity on or use of the Conservation Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties, are expressly prohibited:

(a) Except as provided in the Master Plan and Management Plan: unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement;

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways or as specifically provided in the Master Plan or Management Plan;

(c) Agricultural activity of any kind, except grazing for vegetation management as specifically provided for in the Master Plan or Management Plan;

(d) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except as permitted under this Conservation Easement and specifically provided for in the Master Plan, Management Plan, or may be specifically permitted under this Conservation Easement per Section 14;

(e) Commercial, residential, industrial or institutional uses;

(f) Any legal or de facto division, subdivision or partitioning of the Conservation Property;

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(g) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind, except as specifically provided for in the Master Plan or Management Plan;

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species;

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Conservation Property, except as specifically provided for in the Master Plan or Management Plan;

(k) Altering the surface or general topography of the Property, including any alterations of habitat, building of roads or trails, paving or otherwise covering the Conservation property with concrete, asphalt or any other impervious material, except as specifically provided for in the Master Plan or Management Plan;

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, (3) prevention or treatment of disease; or (4) other habitat protection, preservation restoration or enhancement activities as specifically provided for in the Master Plan or Management Plan; and

(m) Except as specifically provided for in the Master Plan or Management Plan, manipulating, impounding or altering any natural water course, body of water or water circulation on the Conservation Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

(n) Without the prior written consent of Grantee and CDFG, which Grantee or CDFG may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Conservation Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Conservation Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Conservation Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Conservation Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Conservation Property, or the use or activity in question.

4. **Grantor's Duties.** Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation

Values of the Conservation Property or are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend the rights of Grantee and CDFG under Section 2 of this Conservation Easement, and observe and carry out the obligations of Grantor under the CAA, the Master Plan and Management Plan.

5. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Conservation Property to ensure compliance with the conservation and restoration goals set forth in the Master Plan and Management Plan; and

(2) Prepare reports on the results of the monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 5(a) shall not apply.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Conservation Property, including the right to engage in or to permit or invite others to engage in all uses of the Conservation Property that are not expressly prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies. CDFG, as a third party beneficiary of this Conservation Easement, shall have the same rights as Grantee under this section to enforce the terms of this Conservation Easement. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. At the time of giving any such notice, Grantee shall give a copy of the notice to CDFG. If Grantor fails to cure the violation within sixty (60) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than sixty (60) days to complete and Grantor fails to begin the cure within the sixty (60)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either monetary damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property. For the purposes of this section, the term "cure" shall include the Grantor's efforts to comply with local, State and federal laws (including environmental documentation and acquisition of permits), the possible need to engage qualified consultants and contractors for compliance and implementation of the measures necessary to address the violation.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement that affect or can affect the Conservation Values of the Property. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement that affects the Conservation Values of the Property are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either monetary damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of Grantee to discover a violation within a reasonable time of the commencement of the violation or to take immediate legal action shall not bar Grantee from taking such action at a later time. Nonetheless, Grantee shall make reasonable efforts to timely discover violations. If the Grantee fails to make reasonable efforts to timely discover violations or act upon such discoveries, the Grantor may assert a defense of estoppels or laches. In any event, Grantee shall act, either by (1) following the procedures set forth herein in this Section 7 or (2) other legal action within 30 days of discovering a violation.

If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, notwithstanding Civil Code Section 815.7, the California Attorney General or any entity or individual with a justiciable interest in the preservation of this Conservation Easement has standing as interested parties in any proceeding affecting this Conservation Easement.

7.1. Costs of Enforcement. Any costs incurred by Grantee or CDFG, where it is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor. However, in cases where it is found that Grantee's or CDFG's negligence contributed to the violation or damage, the costs borne by Grantor for the suit and attorneys' and experts' fees shall be limited to the proportion of the Grantor's contribution to the violation or damage.

7.2. Discretion of Grantee and CDFG. Enforcement of the terms of this Conservation Easement by Grantee or CDFG shall be at the discretion of the enforcing party, and any forbearance by Grantee or CDFG to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee or CDFG of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights (or any rights of CDFG as a third party beneficiary) under this Conservation Easement. No delay or omission by Grantee or CDFG in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

7.3. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee or CDFG to bring any action against Grantor for any injury to or change in the Property resulting from: (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; (ii) acts of war or terrorism; (iii) riots or civil disturbances; or (iv) unlawful acts by individuals other than employees or agents of the Grantor; (v) unlawful acts by employees or agents of the Grantor acting outside their scope of employment with the Grantor; (vi) acts by employees or agents of the United States, the State of California or municipalities or districts other than the Grantor; or (vii) acts by Grantee or its employees or CDFG or its employees.

7.4. Department of Fish and Game Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by CDFG. These rights are in addition to, and do not limit, the rights of enforcement under the CAA, the Master Plan or the Management Plan.

8. Fence Installation and Maintenance. Grantor shall install and maintain a fence reasonably satisfactory to Grantee and CDFG around the Conservation Easement area to protect the conservation values of the Property, including but not limited to wildlife corridors, except in areas that would impede stream flows in violation of Los Angeles County Code Section 20.94 (Channels).

9. Access. This Conservation Easement does not convey a general right of access to the public.

10. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee nor CDFG shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement Deed, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Grantee and CDFG do, however, agree to work in good faith with Grantor to expedite the processes for all permits under their purview.

(a) Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and CDFG with satisfactory evidence of payment or tax-exempt status upon request. Grantor shall keep the Property free from any liens, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

(b) **Hold Harmless.** Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and, collectively, "**Grantee's Indemnified Parties**") and CDFG and its directors, officers, employees, agents, contractors, and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a "**CDFG Indemnified Party**" and, collectively, "**CDFG's Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that (a) this indemnification shall be inapplicable to Grantee's Indemnified Parties with respect to any Claim due solely to the negligence of Grantee or any of its employees and (b) this indemnification shall be inapplicable to CDFG's Indemnified Parties with respect to any Claim due solely to the negligence of CDFG or any of its employees; (2) the obligations specified in Sections 4, 10, and 10(a); and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the CDFG Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from CDFG, defend such action or proceeding or reimburse CDFG for reasonable attorneys' fees incurred by the California Attorney General in defending the action or proceeding.

(c) **Extinguishment.** If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) **Condemnation.** The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

11. **Transfer of Easement.** This Conservation Easement is transferable by Grantee, but Grantee may assign this Conservation Easement only to CDFG or another entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 (or any successor provision then applicable) or the laws of the United States. Grantee shall require the assignee to record the assignment in the county where the Property is located.

12. **Transfer of Property.** Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and CDFG of the

intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee or CDFG shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor, Grantee or CDFG to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

13. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor:	Los Angeles County Flood Control District 900 South Fremont Avenue Alhambra, CA 91803 Attention Chief Engineer
To Grantee:	Los Angeles County Department of Public Works 900 S. Fremont Avenue Alhambra, CA 91803 Attention Director of Public Works
To CDFG:	Department of Fish and Game South Coast Region (Region 5) 4949 Viewridge Avenue San Diego, CA 92123 Attention Regional Manager
With a copy to:	County of Los Angeles Office of the County Counsel 648 Kenneth Hahn Hall of Administration 500 West Temple Street Los Angeles, CA 90012 Department of Fish and Game Office of the General Counsel 1416 Ninth Street, 12th Floor Sacramento, California 95814-2090 Attention General Counsel

or to such other address as Grantor, Grantee or CDFG may designate by written notice to the other parties. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

14. **Amendment.** This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and subject to the prior written approval of CDFG. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Los Angeles County, State of California.

15. **General Provisions.**

(a) **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

(b) **Liberal Construction.** Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement Deed, such action shall not affect the remainder of this Conservation Easement Deed. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement Deed to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) **No Forfeiture.** Nothing contained in this Conservation Easement Deed will result in a forfeiture or reversion of Grantor's title in any respect.

(f) **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Conservation Property.

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(g) **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement Deed terminate upon transfer of the party's interest in the Conservation Easement or Conservation Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) **No Hazardous Materials Liability.**

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Conservation Property, or transported to or from or affecting the Conservation Property.

(2) Without limiting the obligations of Grantor under Section 9(b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties and the CDFG Indemnified Parties (each as defined in Section 9(b)) from and against any and all Claims (as defined in Section 9(b)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Conservation Property at any time, except that (i) this indemnification shall be inapplicable to the Grantee Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by Grantee, its employees or agents and (ii) this indemnification shall be inapplicable to the CDFG Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by CDFG, its employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation by Grantor of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the CDFG Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from CDFG, defend such action or proceeding or reimburse CDFG for reasonable attorneys' fees incurred by the California Attorney General in defending the action or proceeding.

(3) Despite any contrary provision of this Conservation Easement Deed, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or CDFG any of the following:

(i) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "CERCLA"); or

(ii) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(iii) The obligations of a responsible person under any applicable Environmental Laws; or

(iv) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(v) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(4) The term "Hazardous Materials" includes, without limitation:

(i) Material that is flammable, explosive or radioactive;

(ii) Petroleum products, including by-products and fractions thereof; and

(iii) Hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in (A) CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter "RCRA"); (B) the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; (C) hereinafter "HTA"); (D) the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "HCL"); (E) the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "HSA"), and (F) in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement Deed.

(5) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution,

protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and CDFG that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) **Warranty.** Grantor represents and warrants that Grantor is the sole owner of the Conservation property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Grantee and CDFG pursuant to the Conservation Property Assessment and Warranty signed by Grantee and attached as an exhibit to the CAA, there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) may conflict or are inconsistent with this Conservation Easement Deed.

(k) **Additional Easements.** Grantor shall not grant any additional easements, rights of way or other interests in the Conservation Property (other than a security interest that is subordinate to this Conservation Easement Deed), or grant or otherwise abandon or relinquish any water agreement relating to the Conservation Property, without first obtaining the written consent of Grantee and CDFG. Grantee or CDFG may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the conservation values of the Conservation Property. This Section 14(k) shall not limit the provisions of Section 2(d) and 3(n), nor prohibit transfer of a fee or leasehold interest in the Conservation Property that is subject to this Conservation Easement Deed and complies with Section 11.

(l) **Recording.** Grantee shall record this Conservation Easement Deed in the Official Records of Los Angeles County, California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) **Third Party Beneficiary.** Grantor and Grantee acknowledge that CDFG is a third party beneficiary of this Conservation Easement with the right of access to the Conservation Property and the right to enforce all of the obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement Deed.

(n) **Funding.** Endowment funding for the perpetual management, maintenance, and monitoring of the Conservation Property shall be specified and governed by the CAA and the Management Plan.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

GRANTEE:

BY: _____

BY: _____

NAME: Mark Pestrella

NAME: Gail Farber

TITLE: Assistant Director

TITLE: Director of Public Works

DATE: _____

DATE: _____

APPROVED AS TO FORM:

**General Counsel
State of California
Department of Fish and Game**

BY: _____
Ann S. Malcolm, General Counsel

**County Counsel
County of Los Angeles**

BY: _____
Senior Deputy Counsel

PW
P:\wrd\GENERAL\Facilities\Users\PAT\Big T Wash\Big T MB Conserv Grant Deed vers Nov 8 2010.doc

EXHIBIT A

**File with: BIG TUJUNGA DAM AND RESERVOIR –
BIG TUJUNGA CANYON P-79**

Affects: Parcel Nos. P-79F, P-81F, P-83F, P-84F, P-85F,
P-86F, P-87F, P-88F, P-89F, P-90F, P-91F, P-93F,
P-95F, P-96F, P-97F, P-98F, 100F, and 101F
63-RW 9.1, 9.2, 9.3, 9.4, 9.5, and 9.6

A.I.N. 2528-030-906 and 907

2548-004-900

2549-002-905, 906, 908, 909

2549-004-900, 901, 902, 903, 904, 905,
907, 913, and 914

T.G. 503 (C2, C3, D2, and D3)

I.M. 204-177

S.D. 5

H0321131

LEGAL DESCRIPTION

(Grant of easement)

Part A (Parcel Nos. 79GE and 83GE):

That certain parcel of land in Lots 22 and 27, of the subdivision of the West portion of Tujunga Ranch, as shown on map recorded in Book 29, pages 51 and 52, of Miscellaneous Records, in the office of the Registrar-Recorder/County Clerk of the County of Los Angeles, described as PARCEL 4 in deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, recorded on November 10, 1998, as Document No. 98-2056335, of Official Records, in the office of said Registrar-Recorder/County Clerk.

EXCEPTING therefrom those certain parcels of land described as PARCEL NOS. 80EX and 82EX in deed to MARCIAN A. HERMAN and ROYAN VIRGINIA HERMAN, Trustees of the Trust of Marcian A. Herman and Royan Herman dated January 25, 1996, recorded on August 17, 2000, as Document No. 00-1296105, of said Official Records.

Part B (Parcel No. 81GE):

That certain parcel of land in Lots 21 and 27, of above-mentioned subdivision of the West portion of Tujunga Ranch, described as PARCEL 8 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

Part C (Parcel Nos. 84GE, 85GE, and 86GE):

That certain parcel of land in Lots 22 and 23, of above-mentioned subdivision of the West portion of Tujunga Ranch, described as PARCEL 9 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

Part D (Parcel No. 87GE):

That certain parcel of land in Lot 1, Tract No. 10958, as shown on map recorded in Book 198, pages 8, 9, and 10, of Maps, in the office of above-mentioned Registrar-Recorder/County Clerk, described as PARCEL 7 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, together with the easterly 20 feet of Cottonwood Avenue, 40 feet wide, as shown on said map of Tract No. 10958 and vacated by City of Los Angeles Resolution No. 03-1400737, recorded on January 22, 2004, as Document No. 04-0150611, of above-mentioned Official Records, bounded northerly by a line which bears at right angles from the westerly line of said PARCEL 7 and which passes through the northwesterly corner of said PARCEL 7 and bounded southerly by the westerly prolongation of the southerly line of said PARCEL 7.

Part E (Parcel No. 88GE):

That certain parcel of land in above-mentioned Lot 1, Tract No. 10958, described as PARCEL 6 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, together with the easterly 20 feet of above-mentioned Cottonwood Avenue, bounded northerly by the westerly prolongation of that certain course having a length of 38.41 feet in the northerly boundary of said PARCEL 6 and bounded southerly by the westerly prolongation of that certain course having a length of 99.23 feet in the southerly boundary of said PARCEL 6.

Part F (Parcel No. 89GE, 90GE, 91GE, and 93GE):

That certain parcel of land in Lots 21 and 22, Tract No. 999, as shown on map recorded in Book 16, pages 166 and 167, of above-mentioned Maps, and in above-mentioned Lot 1, Tract No. 10958, described as PARCEL 5 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, together with the easterly 20 feet of above-mentioned Cottonwood Avenue, bounded northerly by the westerly prolongation of the northerly line of said Lot 1 and bounded southerly by a curve, concave to the north and having a radius of 2957 feet and being concentric to the curved northerly line of Wentworth Street, 80 feet and variable width, as shown as having a radius of 2960 feet on the map of Tract No. 14953, recorded in Book 318, pages 25, 26 and 27, of said Maps.

EXCEPTING therefrom those portions lying southerly of the most northerly sideline of said Wentworth Street.

ALSO EXCEPTING therefrom those portions of above-mentioned Cottonwood Avenue, described in the above Parts D and E.

Part G (Parcel No. 95GE and 98GE):

That certain parcel of land in Lot 2, of above-mentioned Tract No. 10958, and in Lot 1, Tract No. 25219, as shown on map recorded in Book 662, page 44, of above-mentioned Maps, described as PARCEL 1 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

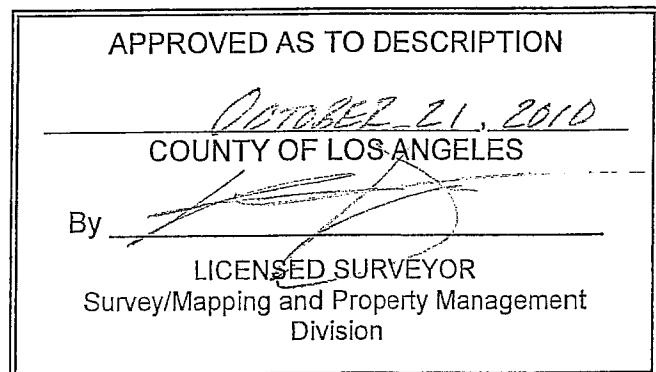
Part H (Parcel No. 96GE):

That certain parcel of land in Lot 23, of above-mentioned Tract No. 999, described as PARCEL 3 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

EXCEPTING therefrom that portion described as PARCEL NO. 96EX in deed to DALE GIBSON and HEATHER GIBSON, recorded on May 7, 2008, as Document No. 20080806077, of above-mentioned Official Records.

Part I (Parcel No. 97GE, 100GE, 101GE):

That certain parcel of land in Lot 24, of above-mentioned Tract No. 999, described as PARCEL 2 in above-mentioned deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, and those certain parcels of land in said Lot 24, described as PARCEL NO. 100F and PARCEL NO. 101F, both in deed to LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, recorded on May 7, 2008, as Document No. 20080806076, of above-mentioned Official Records.

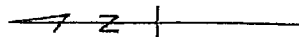


2548 4
SCALE 1" = 100'

1999

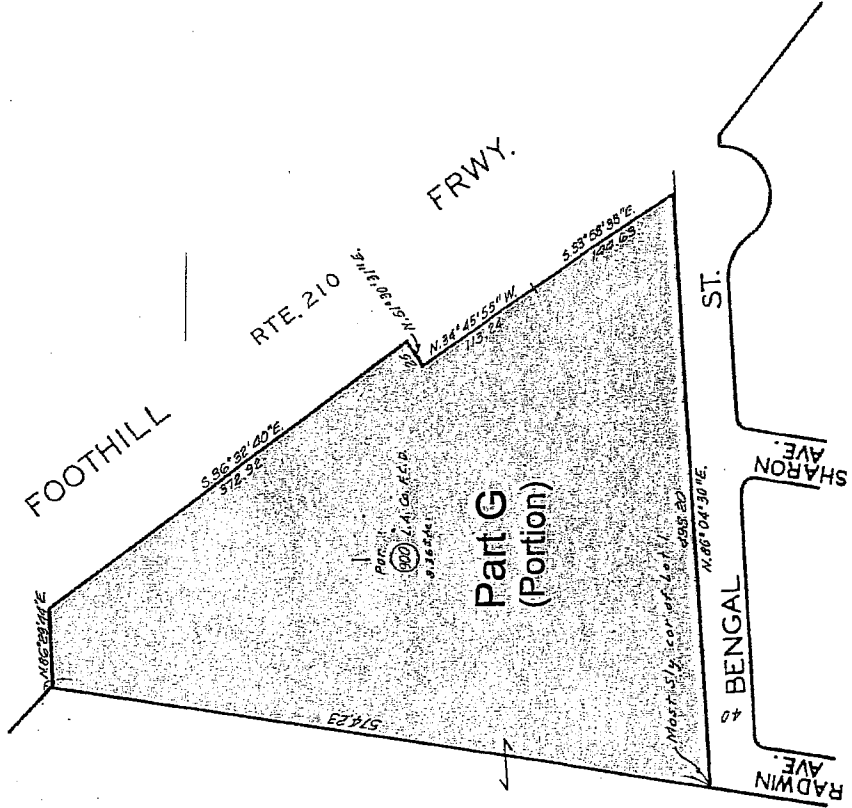
REVISED
12-1-60
7-7-61
680207
70102377
711006
75030560
750331
751008
790416210
87121404-04
1999011204001001-03

TRACT NO. 25219
M.B. 662 - 4 4
Part G continue
on AMB 2549-004



CODE
13

1925 - 4
FOR PREV. ASSMT. SEE: 2548 - 5

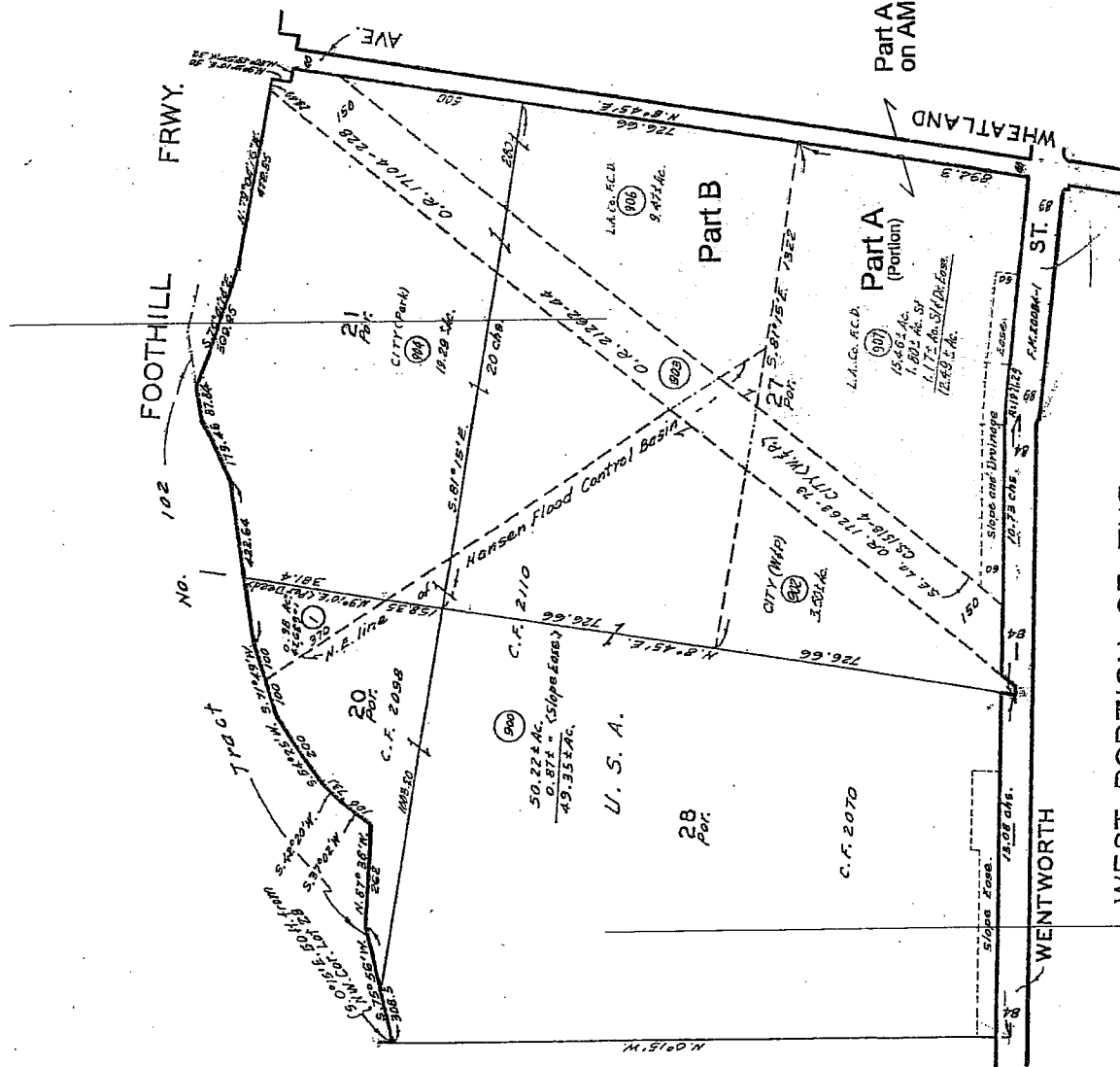


ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

2528 | 30
SCALE 1" = 300'

2001

REVISED
2-14-88
3-3-84
680202
7103225009
720609502
740322514
740409
740411
870303004-87
899531
199401130904001-03



WEST PORTION OF THE
TUJUNGA RANCH

FOR PREV. ASSMT. SEE: 681-415

M.R. 29 - 51 - 52

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

